

DIVISION I

CA06-705

September 12, 2007

GLENN DAVID WOODS AND
LEANN B. WOODS

APPELLANTS

V.

BEVERLY TAPPER

APPELLEE

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[NO. CV-2003-272-2]

HON. DAVID FREDRICK GUTHRIE,
CIRCUIT JUDGE

AFFIRMED

Glenn David Woods and his wife Leann B. Woods appeal from a judgment of the Ouachita County Circuit Court that awarded Beverly Tapper \$12,079.19 in damages for conversion of items from Tapper's framing business. Tapper had operated her business in a commercial building that she leased from the Woodses. On appeal, the Woodses argue that there was insufficient evidence to support the trial court's judgment. We affirm.

In November 2001, Tapper purchased a framing business conducted in a "barn" owned by the Woodses in the Wadleigh Creek shopping center in Camden. Tapper continued to operate the business in the same leased premises as her predecessor. In October 2003, Tapper informed the Woodses that she intended to relocate her business at the end of the month. On October 30, 2003, Glen David Woods went to the frame shop. He became concerned, allegedly because he believed that Tapper was damaging the premises, and called the police. Woods had Tapper removed from the property and changed the locks. Shortly

thereafter, the Woodses leased the building to their niece, Tracey Carter Woolfe, who began operating a framing business early in November 2003.

Tapper filed suit, initially seeking to enjoin the Woodses and their new tenant from disposing of her property. After a preliminary injunction was granted, the Woodses answered and counterclaimed for damages associated with Tapper's alleged violations of the lease, including a claim that Tapper removed property that belonged to the Woodses. At some point, the Woodses placed some of Tapper's property outside the building, and she retrieved it in late November.

At trial, Tapper testified that her erstwhile framing business had passed through a number of owners, including the Woodses. She stated that through each sale, the business's most valuable asset was a large quantity of picture-frame molding, which was stored in the upstairs of the building. When she purchased the business, the previous owner valued the inventory at \$89,000, of which she estimated \$80,000 was molding. In 2003, she performed an inventory during which she counted approximately 2000 pieces of molding. According to Tapper, the pieces varied in length from eight to fourteen feet, although the most common length was nine feet. She estimated that the "average fair market value per foot" of the molding was five dollars.

Tapper claimed that after the Woodses evicted her from the building, she was able to pick up only a small quantity of "usable" molding. Most of the material that the Woodses had surrendered to her was damaged and ultimately relegated to a burn pile. She asserted that there were several pieces of equipment and approximately 700 pieces of "new" picture

molding as well as other supplies and inventory that were not returned to her by the Woodses. She estimated that the fair market value of the material was \$35,907. Tapper's daughter, Marisa Garret, corroborated her mother's testimony concerning the fact that the Woodses mostly allowed Tapper to retrieve old, unusable molding, and virtually none of the new material.

The Woodses disputed Tapper's claims that she had not received all of her molding. Glenn David Woods testified that he removed all of the molding that was stored in the building and made it available to Tapper for pick-up. He also disputed the ownership of several pieces of equipment that Tapper claimed. Additionally, he stated that he spent "\$2,000 or \$3,000" fixing up the building to make it ready for his new tenant, Woolfe. Glenn David Woods's father, Preston Woods, testified that all of the molding was removed from the building, and Wolfe testified that she did not see any molding when she took over the building.

The trial judge entered an order that settled ownership of several items of equipment. He awarded \$1,653.35 to Tapper for depreciated value of the equipment. He also awarded Tapper \$12,600 for the molding stock and \$825.84 for other miscellaneous inventory that the Woodses had allegedly retained. The judge offset Tapper's award by allowing the Woodses \$3,000 for Tapper's damage to the building.

On appeal, the Woodses argue that there is insufficient evidence to support the trial court's award of damages. They contend that the trial court's findings are clearly erroneous because Tapper failed to present sufficient evidence to afford a basis for measuring the

damages with “reasonable certainty,” as the law requires. Regarding the equipment, they note that the trial court awarded judgment based on its depreciated value according to the Internal Revenue Service’s depreciation schedules. Without citation of authority, they assert that it was “not an appropriate calculation of present fair market value.” Further, they assert that because they disputed the fact that they withheld molding stock from Tapper and the trial court discounted the value of Tapper’s claim, this equates to a failure of proof. We disagree.

When we review a bench trial, we do not reverse unless we determine that the circuit court erred as a matter of law or we decide that its findings are clearly against the preponderance of the evidence. *Vereen v. Hargrove*, 80 Ark. App. 385, 96 S.W.3d 762 (2003). Conversion is a common-law tort action for the wrongful possession or disposition of another's property. *McQuillan v. Mercedes-Benz Credit Corp.*, 331 Ark. 242, 961 S.W.2d 729 (1998). The proper measure of damages for conversion of property is the market value of the property at the time and place of the conversion. *Elliott v. Hurst*, 307 Ark. 134, 817 S.W.2d 877 (1991).

While it is true that proof of the market value of converted property must be proven with “reasonable certainty,” as the Woodses argue, the law does not require that the value be proven with scientific precision. A loss may be determined in any manner which is reasonable under the circumstances. *Hudson v. Cook*, 82 Ark. App. 246, 105 S.W.3d 821(2003). We will affirm if the trier of fact is presented with sufficient proof to support its judgment without resort to speculation. *Id.* Testimony concerning the purchase price is competent

circumstantial evidence of the market value of the property at the time of the conversion. *See id.*

With regard to valuing the equipment, Tapper admitted in her testimony that used equipment would be worth half as much as the replacement cost, and the the finder-of-fact took proper notice of the fact and depreciated Tapper's claim accordingly. We cannot say that this was clear error. Regarding the molding, the essence of the Woodses' argument is that there was insufficient proof that they retained any of it. However, disputed facts and the determination of the credibility of witnesses are within the province of the circuit court, sitting as the trier of fact. *Vereen v. Hargrove, supra*. It is apparent that the trial court found credible Tapper's claim that a substantial amount of molding was not returned to her. The fact that the trial judge failed to give Tapper the entire dollar amount that she sought is of no moment; as noted previously, there was a sufficient basis in the proof whereby the finder of fact could determine what it believed was fair-market value of the molding. We hold that the trial court's judgment was not clearly erroneous.

Affirmed.

PITTMAN, C.J., and MILLER, J., agree.

